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ALEXANDER L. STEVAS,
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82-305

NO. _____

IN THE SUPREME COURT OF THE UNITED STATES

October Term 1981

Farmers Bank & Trust Company
of Winchester, Tennessee,
Petitioner

v.

Transamerica Insurance Company,
Respondent

On Petition for Certiorari
To the United States Court
of Appeals for the Sixth Circuit

Petition for Certiorari

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QUESTION PRESENTED FOR REVIEW

Where the Court of Appeals concludes that a District Court has made infirm findings of fact because the District Court operated under an erroneous view of the law and where the record permits more than one resolution of the factual issues, is remand the proper course?

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REFERENCE TO THE OPINIONS FROM THE COURTS BELOW

The opinion of the District Court was dated November 20, 1980, and is included in the Appendix. The opinion of the United States Court of Appeals for the Sixth Circuit Case No. 80-5486, dated March 29, 1982, is included in the Appendix. The Order Denying Petition for Rehearing dated May 20, 1982, is included in the Appendix.

STATEMENT OF JURISDICTION

The date of the judgment sought to be reviewed is March 29, 1982, a petition for rehearing having been timely filed, which was denied May 20, 1982.

Jurisdiction of this Court is invoked under 28 U.S.C. §1254(1).

STATEMENT OF THE CASE

The facts material to the consideration of the question presented can be stated simply. The District Court made findings of fact and conclusions of law in its Memorandum Opinion. The Court of Appeals concluded that the District Court made erroneous findings because of an erroneous view of the law. The Court of Appeals, without concluding that the record permitted only one resolution of the factual issues, reversed the judgment of the District Court and entered judgment against the petitioner who had prevailed in the Court below, declining to remand the case for further proceedings. The basis for jurisdiction in the Court below was 28 U.S.C. §1332.

ARGUMENT

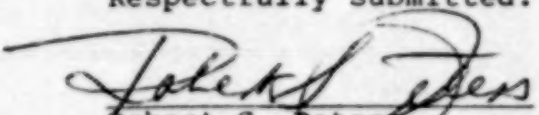
The Court of Appeals departed drastically from the accepted and usual course of judicial proceedings by failing to remand this case. Therefore an exercise of this Court's supervisory authority is necessary. The Court of Appeals' treatment of this case is in direct conflict with its responsibility to remand the matter for further proceedings as explained by Justice White in Pullman Standard v. Swint, _____U.S._____, 72 L.Ed 2d 66 (1982). Petitioner respectfully submits that this Court should grant this petition and vacate the decision of the Court of Appeals and that the Court of Appeals remand the case for further proceedings in the tribunal charged with fact-finding in the first instance.

In this case the record permits more

than one resolution of the factual issue in question. In such a case, where, in the opinion of Appeals, the findings of fact are infirm, remand, not dismissal, is the proper course for the Court of Appeals. The Court of Appeals found that the District Court had failed to consider evidence it deemed relevant and furthermore that the District Court made an erroneous finding of fact because of an erroneous view of the law. In either instance, as Pullman Standard v. Swint makes clear, remand is the proper course. All this is elementary. The Court of Appeals deviated from its proper appellate role. The Court of Appeals should have vacated the judgment of the District Court and remanded the action for further proceedings consistent with its opinion. The District Court should

then re-examine the record in light of the proper legal standard. Kelley v. Southern Pacific Co., 419 U.S. 318, 331-32 (1974).

Respectfully submitted.



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